

Kennebunkport Zoning Board of Appeals
HYBRID MEETING via ZOOM and IN Person
Monday, October 3, 2022 @ 6:00 P.M.
Village Fire Station, 32 North Street, Kennebunkport

A virtual meeting of the Kennebunkport Zoning Board of Appeals was held on Monday, October 3rd, 2022 via Zoom. The meeting convened at 6:00 p.m.

Members Present: Mr. Paul Cadigan (Chair), Karen Schlegel, April Dufoe, Michelle Powell, Marybeth Gilbert

Mr. Cadigan performed a roll call and confirmed a quorum.

*1. **Approval of Minutes** from August 8, 2022.*

Mr. Cadigan, Ms. Dufoe, Ms. Powell, and Ms. Gilbert are eligible to vote approval of the August 8, 2022 Zoning Board of Appeals minutes. Ms. Gilbert made a motion to approve said minutes. Ms. Dufoe seconded the motion, and the vote was unanimous of all eligible voters.

*2. **Administrative Appeal of The Estate of Joann Poli** – The applicant appeals the determination of the Code Enforcement Officer that the property, which has a legal description of two lots of land, has been merged based on its history, size, and status, and that it cannot be treated as two separate and distinct lots that can be separately built on and conveyed. 138 Wildes District Road, Assessor’s Tax Map 21, Block 4, Lot 34 in the Village Residential East Zone.*

Mr. Cadigan introduced the agenda item and explained the order in which this meeting will proceed.

Mr. Cadigan also noted for the Applicant that the by-laws of this appeal require an affirmative vote of 4 in order to prevail.

Due to some irregularity in the timing of this meeting and a delay in mailing hard copies of the Application materials from the Applicant, although the Applicant submitted electronic copies of the material within the deadline for submission, Mr. Cadigan asked the Board members to vote if they were in favor of proceeding with tonight’s meeting. By a unanimous show of hands, the Board members agreed tonight’s meeting should proceed.

Attorney Alan Nelson addressed the Board to give his presentation. Some of the points Attorney Nelson made on behalf of his clients were:

- Nicholas and Joann Poli purchased the two lots from Jerad P. Goulden and Evelyn A. Goulden on August 1st, 1970 and is recorded in Book 1884 Page 393.
- These 2 lots are legally non-conforming and adjacent to each other.
- The lots were recorded in the Registry of Deeds at a time when the town had no zoning ordinances.

- According to the deed submitted with this Appeal, the two lots are fully and separately described.
- A Confirmation Deed was made on May 6, 1973 to confirm the prior conveyance of lot #2 to Nick Poli.

Attorney Nelson concluded his lengthy presentation by stating the new buyer of the estate has asked for assurances that these are 2 buildable lots from the Code enforcement Officer.

Attorney Nelson noted although the Code Enforcement Officer, Mr. Werner Gilliam, did an excellent job in his research, this Board is charged to hear this case tonight *de novo*, meaning anew; and citing Mr. Gilliam mistakenly made his reliance on zoning ordinances that didn't exist when these 2 lots were recorded lots of record. Attorney Nelson further argued that these 2 lots are grandfathered and legally non-conforming due to zoning.

Attorney Nelson concluded his presentation stating the two lots are separately described as recorded and because those lots preceded any zoning, they are separate lots of record and each can be built upon.

Ms. Rita Poli addressed the Board stating she was a senior in high school when her father and Joann bought the properties in 1968 and it was always 2 lots with one lot on Wildes District Road and the other lot on Oak Run Road.

Mr. Chuck Reid, a longtime friend of Nick Poli, also addressed the Board stating he recalls Nick talking about building a smaller home on the second lot and Nick's frustration in never getting a determination that he could build on the 2nd lot. Mr. Cadigan asked who was Mr. Poli trying to get a determination from? Mr. Reid replied from the town office as he never really could get an answer one way or the other.

Ms. Gilbert questioned why in October of 1978 and November of 1981 when the family applied for and was granted building permits, both permits list the lot size as a combination of the two lots? Attorney Nelson responded stating a town tax map does not establish boundary lines; only a deed can convey ownership and establish boundary lines.

Ms. Gilbert then asked if it is their argument that any lot that is purchased before the ordinance is put in place, all ordinances are grandfathered to infinity? Attorney Nelson replied yes.

Ms. Gilbert questioned how a deed can grant the ability to become a buildable lot.

The Board members and Attorney Nelson had a detailed discussion on anchor points, legal descriptions and deeds as recorded.

Mr. Cadigan asked the Applicant if it is his position that to qualify as a lot of record a description has to be recorded at the registry prior to the adoption of the ordinance. Attorney Nelson replied Yes. Mr. Cadigan then added that there is no description of a lot of record prior to the adoption of the ordinance. Attorney Nelson responded by

acknowledging Mr. Cadigan's statement and added that a Confirmatory Deed does not convey, but rather it clarifies what is already on record.

A brief discussion with Ms. Gilbert and Attorney Nelson occurred on the properties' legal description and the possibility of a surveyor using the Confirmatory Deed to walk the property lines.

Mr. Cadigan questioned if the Poli's receive one tax bill for the properties. Attorney Nelson replied he has no knowledge of it; adding he doesn't understand why that is significant since tax bills don't convey property.

Referring to the first page of the Application, Mr. Cadigan asked if Attorney Nelson is representing that these 2 lots are not subject any zoning? Attorney Nelson responded they are not subject to any zoning that would take away the fact that they are 2 separately described lots or any zoning that would cause these lots to merge because of lot size and common ownership.

There were no further questions for the Applicant at this time.

Mr. Cadigan noted for the record the Applicant and the Code Enforcement Officer submitted somewhat voluminous materials and made a motion the materials provided by the Code Enforcement Officer, which were also provided to Attorney Nelson from the town, be made as part of our record. The other Board members nodded agreement with Mr. Cadigan's motion.

Mr. Gilliam addressed the Board to give his presentation of the materials submitted. Mr. Gilliam then noted the following items:

- The Kennebunkport Code Office was approached by Attorney Nelson and the Poli Faily to review and render a determination on the possibility of splitting the Poli's property.
- The Town's process is to review each property on its own merits and based on record evidence.

Mr. Gilliam then gave a detailed account of his process and walked the Board members through a timeline of all the exhibits submitted by the Code Enforcement Office in rendering their decision. Some of those Exhibits included:

- A recorded plan displaying the Goulden's lots 1 through 5.
- Deed from the Gouldens to the Polis.
- June 1971 Planning Board minutes.
- Plan from July, 1972 Planning Board meeting of Gerald Goulden's property.
- Previously mentioned Confirmatory Deed that does not describe the lot in its entirety.
- A recorded plan of lots 8 through 12 from September 6, 1974.
- Building permits from the Poli's identifying their lot and its irregular size.

In summary, Mr. Gilliam stated all he can do is point to the timeline of record that says an undescribed piece of property was sold by Mr. Goulden who when he went to the Planning Board was told the lot was too small to build on.

Mr. Gilliam concluded his presentation by explaining in detail the ordinance governing non-conforming lots and how the merger provision applies to this situation.

Mr. Cadigan asked if in the town's tax material does it show the lots as a single property. Mr. Gilliam responded that he doesn't have any evidence that shows that these two lots were taxed separately.

Ms. Dufoe noted the properties are only listed as one tax map, block, and lot for both. Mr. Gilliam agreed with Ms. Dufoe's statement.

Mr. Cadigan opened the Public Hearing portion of the meeting.

Ms. Linda Leach of 9 Oak Run, addressed the Board stating they have been long-time neighbors of the Polis and had many discussions with Nick Poli about purchasing the lot that abuts their property but Nick said he couldn't sell it because of the ordinance and even after Joann died they again talked about purchasing the lot but again Nick said they couldn't sell or break up the lot because of the way they had transferred it over to one lot.

Mr. Matt Hickey addressed the Board on Zoom as the owner of property at 4 Oak Run stating there was an opportunity for the Poli family to contest the zoning law that occurred in 1972 and since they did not, then they are held by the same zoning laws the rest of the town is held to.

Mr. Cadigan closed the Public Hearing.

The Board members held a lengthy deliberation amongst themselves on the Applicant's and the town's Code Enforcement Officer's presentations as well as the comments from the public.

Mr. Cadigan made a motion the Board deny the Administrative Appeal of the Estate of Joann Poli by Attorney Nelson. Ms. Schlegel seconded the motion, and the vote was unanimous, 5-0, in favor of denying the Applicant's Administrative Appeal.

Other Business:

The Board members had a brief discussion on altering the language in their by-laws and the Application process regarding the timing for submission of materials.

Adjournment: A motion was made to adjourn; it was seconded, and the vote was unanimous.

Submitted by: Patricia Saunders, Recording Secretary